

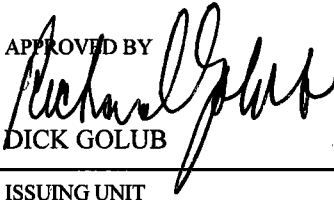
STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION
MANUAL CHANGE TRANSMITTAL
RW 0001 (REV. 10/93)

☒ R/W MANUAL CHANGE
(1993 Edition)

RWMC-- **79**

☐ PROCEDURAL HANDBOOK
(1984 Edition)

RWPH-__-__-__
TRANSMITTAL#__

TITLE	APPROVED BY  DICK GOLUB	DATE ISSUED November 5, 1999
ACQUISITION		Page 1 of 1
SUBJECT AREA Chapter 8 - Acquisition	ISSUING UNIT Office of Appraisals and Local Programs	

SUMMARY OF CHANGES

Revisions to 8.09.09.00; format change to entire Section 8.09.

PURPOSE

8.09.09.00: Clarifies the requirement to include the waiver clause waiving the right to appear before the CTC in both the Agreement for Possession in Use and the Right of Entry, Long Form.
Removes requirement for HQ to pre-approve changes to the Right of Entry document.

EFFECTIVE DATE

Effective immediately.

REVISION SUMMARY

<u>Chapter</u>	<u>Remove Old Page</u>	<u>Insert New/Revised Page</u>	<u>Replace Interim Change</u>
8 - Sections	8.09-1 through 8.09-3 (Rev. 7/98) 8.09-4 through 8.09-6 (Rev. 2/99)	8.09-1 through 8.-09-3 (Rev. 10/99) 8.09-4 through 8.09-6 (Rev. 10/99)	N/A

8.09.00.00 - RENTAL AND POSSESSION PROVISIONS

8.09.01.00 Clauses for Grace Period, Early Vacation and Rent Confirmation

A. Contracts with owner-occupants of residential units who wish to remain in occupancy after close of escrow shall have the following clauses included in the Contract:

"It is agreed that the grantor(s) shall have a 15-day grace period commencing on the day following the date of recordation of the deed conveying title to the State. It is agreed that commencing on the day following the expiration of the grace period and thereafter, the State will rent the property to the grantor using the State's standard form of Rental Agreement"

If desirable, the rental rate may be included in the Contract by adding the following:

"The rental rate shall be \$_____ per month subject to all the terms and conditions as contained in said rental agreement, including the right of either party to cancel and terminate such rental agreement upon thirty (30) days' written notice. Said rental rate shall remain in effect for a period of at least one year; if the property is available for occupancy for that period, and subject to the right of the State to establish a new rental rate after one year if the property remains available for rent."

B. If early vacation of an owner-occupied residential unit is necessary, use the following:

"It is agreed that grantor(s) shall, on the day following the expiration of the fifteen day grace period, vacate and deliver the above-described premises vacant to the State and in good order and condition, without further notice, and immediately thereafter deliver the keys thereto to the Department of Transportation (address) and also pay all closing utility bills up to and including the date of vacation.

In the event, however, grantor(s) does (do) not vacate the premises, grantor(s) agree(s) to pay the State at the rate of \$_____ per day for use and occupancy of said premises beginning the day following the recordation of the deed conveying title to the State; and the acceptance

of such payment by the State shall in no way create a new tenancy between the parties.

In the event grantor vacates the premises prior to the recordation of the deed conveying title to the State, the State is hereby granted possession to use, occupy, or rent the property as it sees fit."

C. If the grantor insists on written confirmation of the rental rate to be charged for continued occupancy after State takes title to the property, the following clause will be included in the Right of Way Contract:

"It is agreed State will rent the property to grantor, using State's standard form (Rental or Lease Agreement) commencing the day following the close of escrow. The (Rental-Lease rate shall be \$_____ per month subject to all the terms and conditions in said (Rental-Lease) agreement, including the right of either party to cancel and terminate said agreement on thirty (30) days written notice. Said (Rental-Lease) rate shall remain in effect for a period of at least one year, if the property is available for occupancy for that period. State has the right to establish a new (Rental-Lease rate after one year if the property remains available for occupancy."

8.09.02.00 Delivery of Property Vacant at Close of Escrow

If early vacation of owner-occupied, nonresidential property is necessary, the following clause will apply:

"It is agreed grantor(s), on the day following the date title vests in State, will vacate and deliver the above-described property to State in good order and condition without further notice and immediately thereafter deliver the keys thereto to the Department of Transportation,

(address), and also pay all closing utility bills up to and including the date of vacation."

8.09.03.00 Delivery of Property Vacant After Close of Escrow

Where the owner desires to retain possession of the property beyond the date of close of escrow, the following clause will be included in the Contract. (The MOS must indicate the consideration the State is receiving for granting such occupancy.)

"It is agreed that grantors shall deliver the above-described premises vacant to State on or before _____ days after the date of recordation of the deed conveying title to State, in good order and condition, without further notice, and immediately thereafter deliver the keys thereto to the Department of Transportation (address) and also pay all closing utility bills up to and including the date of vacation."

8.09.04.00 90-Day Notice of Intention to Take Possession

It is Department policy to schedule construction projects so that no persons lawfully occupying real property required for highway or related purposes shall be required to move from their home, farm or business location without at least 90 days prior written notice from the State or other political subdivision having the responsibility for such acquisition. (Refer to the RAP Chapter for details.) See the Condemnation Chapter for a discussion on Orders for Possession.

8.09.05.00 Eviction by State

The State must either own the property or have legal possession under an O.P. before eviction proceedings can begin. Acquisition must work closely with Relocation to assure that State and Federal procedures are fully complied with. Property Management should be consulted with on how to proceed with evictions since procedures can vary by local jurisdiction.

8.09.06.00 Lease Warranty Provision

Where the owner claims that tenants occupy the property being acquired on a month-to-month tenancy, the following clause will be included in the Contract;

"Grantor warrants that there are no oral or written leases on all or any portion of the property exceeding a period of one month, and the grantor agrees to hold State harmless and reimburse State for any and all of its losses and expenses occasioned by reason of any lease of said property held by any tenant of grantor for a period exceeding one month."

8.09.07.00 Rent Proration and Security Money Collection for Other Than Owner-Occupied Single Family Residential Properties

The following clause will be included in the Contract where property is tenant occupied:

"The grantor(s) shall retain possession of the property conveyed up to and including the date of recording of the deed conveying title to State upon compliance by the grantor(s) with the conditions of this contract. All rents and all security money collected by grantor(s) applicable to any period thereafter shall be paid to the State. Either party hereto collecting rents or security money to which the other party is entitled shall forthwith pay such amount to the other as is necessary to comply with the provisions of this clause."

8.09.07.01 Rent Proration by Escrow Agent

If the District desires that rent be prorated by the escrow agent through use of separate Rental-Escrow Instructions made a part of the Right of Way Contract, use the following clause:

"The grantor(s) shall retain possession of the property conveyed up to and including the date of recording of the deed conveying title to State upon compliance by the grantor(s) with the conditions of this contract. All rents and all security money collected by grantor(s) applicable to any period thereafter shall be paid to the State in accordance with the terms and conditions of the Rental-Escrow Instructions attached hereto and made a part hereof. Either party hereto collecting rents or security money to which the other party is entitled shall, in the final settlement of this contract, pay such an amount to the other as it necessary to comply with the provisions of this clause."

8.09.07.02 **Definite Rent Proration Date**
Established

If grantor insists on a definite date for proration of rents, the following clause may be used:

"All rents shall be prorated as of (date). All rents derived from said property up to and including said date shall be paid to the grantor(s), and all rents derived thereafter shall be paid to the State of California. If any rentals on said property have been or are collected by the undersigned grantor(s) for any period beyond said date, the undersigned grantor(s) shall immediately refund such rentals to the State.

All security money collected by the undersigned grantor(s) shall be paid to the State of California."

8.09.08.00 **Grantor Retaining Temporary Possession**

The following clauses may be used where it is advantageous to allow the grantor to retain possession and use of the property, e.g., avoidance of crop damage payment, control of noxious weeds, agricultural land without an independent water supply or property not capable of independent use. Prior approval of the DDC-R/W must be secured before either of these clauses are included in any Contract.

It is essential in the use of either of these clauses that complete justification be included in the Memorandum of Settlement (MOS). Without justification, it is tantamount to a gift of State property.

"Until such time as the State elects to take possession of any or all of the property acquired herein, the grantor shall have the use and enjoyment of its surface in the same manner as now used, except that in no event shall any advertising sign of any nature whatsoever be placed upon or allowed to remain on the property. Grantor agrees to keep the premises in a neat and clean condition.

The grantor agrees that no improvements other than those already on the property, shall be placed thereof; and the planting of any crops, trees, or shrubs, or alterations, repairs, or

additions to existing improvements which may hereafter be placed thereon are at grantor's risk and without expectation of payment if removed by the State."

Where temporary possession is being allowed and the land is improved with an orchard, or similar enterprise, the District should use the following clause which provides for good husbandry practices, including pest control.

"It is agreed that the undersigned grantor(s) shall harvest the existing _____ crop on that portion of grantor's property being acquired by the State. It is further understood that said crop shall be harvested on or before _____ and, if not harvested by said date, shall become the property of the State to dispose of as it may see fit. The undersigned grantor(s) agree(s) to cultivate and maintain the existing crop in conformance with the practices of good husbandry, including pest control, up to and including date grantor(s) harvest(s) said crop.

It is further understood that this property shall be used only for the purpose of maintaining and harvesting the crop on the subject property.

Upon the failure of the grantor(s) to comply with any condition or provision of this agreement, the authorization to harvest said crop by the grantor(s) shall immediately cease and possession shall be taken by the State."

8.09.09.00 **Right of Entry-Waiver Clause**

After an appraisal has been approved and an offer made, authority to solicit a Right of Entry from the owner may be granted by the DDC-R/W. When deemed absolutely necessary to solicit a Right of Entry from an owner before making the first written offer, approval of the DDC-R/W must first be obtained. Complete documentation for such action must be in the acquisition file.

Authorization to solicit Rights of Entry prior to the appraisal process and first written offer shall be restricted to circumstances which are exceptional or emergency in nature. Ordinarily the Right of Entry will not dislocate people or impact improvements of a significant nature. Typically, Rights of Entry prior to first written offer involve emergency projects or situations which constitute a hazard to the traveling public, or additional areas required during

construction of the transportation facility and are not in conflict with the environmental document related to the project. The normal appraisal and acquisition process must not be unduly delayed after the securing of a Right of Entry prior to the first written offer.

Whenever the content of a Right of Entry is revised or modified from the standard form, approval of Legal must be obtained prior to submitting the Right of Entry to the owner for execution.

The Right of Entry - Long Form (Exhibit 8-EX-23) and Agreement for Possession and Use (Exhibit 8-EX-25) contains a standard clause waiving the owner's right to appear before the California Transportation Commission:

This clause must be included since omission of the clause would provide the owner with the right to question the validity of a project which may be under construction or completed at a time with a Resolution of Necessity may be sought. In limited instances, the Right of Entry - Short Form (Exhibit 8-EX-24) is used, which does not include the waiver clause, may be used. There may be circumstances in which the Right of Entry will not be used. This could occur in emergency situations where there is an immediate danger to life, property, or the highway facility. Under such circumstances, the Department may rely on its Police Power.

The use of a Right of Entry is only appropriate in those situations where the State would ultimately acquire the needed interest by eminent domain proceedings. Whenever it becomes necessary to institute such proceedings on parcels under the State's possession by Right of Entry or Agreement for Possession and Use, there is no need to mail the Notice of Intent.

As a matter of courtesy, a letter should be mailed to the owners advising that, in accordance with the provisions of the Right of Entry, eminent domain proceedings are being commenced.

In exchange for the Department's early possession and use of a property, in those infrequent occasions where settlement has not been reached or condemnation does not appear to be the appropriate course of action, a non-"large organization" property owner will be given the option of receiving compensation based on the State's estimate of just compensation or payment of interest on the

settlement amount. The parcel diary will reflect that such property owners were given this option and their preferred course of action.

If the owner elects to receive payment of interest on the settlement amount and defer immediate compensation, the District/Region will pursue execution of a Right of Entry document.

If the owner elects to receive immediate compensation, the District/Region will pursue execution of an Agreement for Possession and Use document.

8.09.09.01 Agreement for Possession and Use

The Agreement for Possession and Use provides the legal right for the State to possess and use the owner's property prior to the execution of a Right of Way Contract, and, at the same time, allows the owner to receive just compensation for the State's possession and use of the parcel. When an owner elects not to receive immediate compensation, the Right of Entry document can be used.

Use Exhibit 8-EX-25 for the Agreement for Possession and Use. The Agreement for Possession and Use requires that the State record a Memorandum of the Agreement (Exhibit 8-EX-35) and deposit funds into an escrow account to allow the owner to withdraw funds. Refer to 8.60.00 through 8.68.00, and Exhibit 8-EX-36 for more detailed instructions. The process should include proper notification of the owner on the withdrawal of funds. It is critical that lien holders be notified that an escrow and sale are pending to ensure the owner does not withdraw funds that will be needed to satisfy any liens against the property.

8.09.10.00 Construction Permits and Permits to Enter and Construct

When temporary rights are needed to perform work for grantor's benefit, a Permit to Enter and Construct or Construction Permit may be used. These documents provide no permanent right to the State and may be used when the State would not condemn the rights secured. See Exhibits 8-EX-26 and 8-EX-27.

8.09.11.00 Temporary Easements

Where State must enter adjoining property for temporary use during construction, the appropriate

right is a Temporary Easement. This is also the right to be acquired through eminent domain when negotiations fail.

8.09.12.00 Indemnification by State

Where rights of a temporary nature (material agreements, detour easements, drilling permits, etc.) are required, and the property owner or other party to the agreement requests to be indemnified by the State for any damage caused by reason of the users authorized by such agreement, the following clause may be used:

"State agrees to indemnify and hold harmless (name of other party to agreement) from any liability arising out of State's operations under this agreement. State further agrees to assume responsibility for any damages proximately caused by reason of State's operations under this agreement and State will, at its option, either repair or pay for such damage."

Easements for slope purposes, whether temporary or permanent, are not considered as being "temporary" for the purposes of this section.

8.09.13.00 Right of Possession

Where early possession is required and no Order for Possession has been obtained, add the following clause to the Contract:

"It is agreed and confirmed by the parties hereto that notwithstanding other provisions in this contract, the right of possession and use of the subject property by the State, including the right to remove and dispose of improvements, shall commence on: _____ or the close of escrow controlling this transaction, whichever occurs first, and that the amount shown in Clause 2(A) herein includes, but is not limited to, full payment for such possession and use, including damages, if any, from said date."

8.09.14.00 Confirming Date of Possession

Whenever State has secured an Order for Possession or a Right of Entry and settlement is by Contract, the contract shall include the following clause:

"It is agreed and confirmed by the parties hereto that notwithstanding other provisions in this contract, the right of possession and use of

the subject property by the State, including the right to remove and dispose of improvements, commenced (effective date of Order for Possession or Right of Entry) and that the amount shown in Clause 2(A) herein includes, but is not limited to, full payment for such possession and use, including damages, if any, and interest from said date.

See the R/W Engineering Chapter for deed clause where an Order for Possession or Right of Entry has been obtained.

8.09.15.00 Confirming Vacation in Hardship Acquisitions

The following clause is only to be used in hardship acquisitions. Although it should be adequate to accomplish the stated objective, the District should use extreme care in implementing it. Under Government Code Section 87261(b)(3), the District must be able to assure the grantor (who, upon acquisition, becomes eligible for benefits under the Relocation Assistance Act) that within a reasonable period of time prior to displacement, comparable replacement housing will be available. Further, Section 6042 of the Department of Housing and Community Development Guidelines requires that the displacee be actually offered replacement housing before forced to vacate the property. For this reason and because eviction can only be used as a last resort, the 90-day notice should be served on the grantor only after having been given a reasonable number of offers of a replacement dwelling (HCD) Guidelines SS6042(d), 6058).

"It is understood and agreed between the parties hereto that the sole reason for the State's purchase of the subject property at this time is to alleviate a hardship condition presently suffered by the grantor(s) and that said hardship can only be cured by the grantor(s) selling and vacating the premises. It is, therefore, confirmed by the parties hereto that the grantor(s) has (have) received notice of the State's intent to serve a 30-day Notice to Vacate and that said Notice to Vacate will be served either (1) after the close of escrow or (2) after 90 days from the date of said notice of intent to serve the 30-day eviction notice. Grantor(s) will deliver the premises vacant to the State in good order and condition without further notice and will immediately thereafter deliver the keys to the premises to the Department (District

Office address) and also pay all closing utility bills up to and including the date of vacation."